

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICK GIOULES,

Plaintiff,

-against-

ANTIGUA PHARMACY LLC and
BRENDALIS ANTIGUA,

Defendants

1:21-CV-06400

ANSWER

Defendants, Antigua Local Pharmacy, LLC (improperly pled as “Antigua Pharmacy LLC”) and Brendalis Antigua (collectively “Defendants”), by way of answer to the allegations contained in the Complaint says as follows:

INTRODUCTION

1. The statement contained in paragraph one requires Defendant to draw a legal conclusion. Insofar as any denial is required, Defendant denies the allegations contained in paragraph one.
2. The statement contained in paragraph two requires Defendant to draw a legal conclusion. Insofar as any denial is required, Defendant denies the allegations contained in paragraph two.
3. The statement contained in paragraph three requires Defendant to draw a legal conclusion. Insofar as any denial is required, Defendant denies the allegations contained in paragraph three.

4. The statement contained in paragraph four requires Defendant to draw a legal conclusion. Insofar as any denial is required, Defendant denies the allegations contained in paragraph four.
5. The statement contained in paragraph five requires Defendant to draw a legal conclusion. Insofar as any denial is required, Defendant denies the allegations contained in paragraph five.

JURISDICTION AND VENUE

6. Denied.
7. Denied.
8. Denied.

PARTIES

Plaintiff

9. Admitted.
10. Denied.

Defendants

11. Admitted.
12. Admitted.
13. Denied.

NATURE OF ACTION

14. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

15. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF
FACTS**

16. Denied.
17. Denied.
18. Admitted.
19. Denied.
20. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
21. Denied.
22. Denied.
23. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
24. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

25. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

26. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

27. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

28. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

29. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

30. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
31. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
32. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
33. Denied.
34. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
35. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
36. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

37. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

**DEFENDANT'S RESPONSE TO FLSA COLLECTIVE ACTION
ALLEGATIONS**

38. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
39. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
40. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

DEFENDANT'S RESPONSE TO RULE 23 CLASS ALLEGATIONS

41. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
42. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
43. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
44. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
45. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
46. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

47. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

48. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

49. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

ANSWERING THE FIRST CAUSE OF ACTION

FLSA Overtime Wage Violations—DENIED

50. The foregoing paragraphs are incorporated herein by reference as though fully set forth at length herein.

51. Admitted.

52. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

53. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
54. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
55. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
56. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
57. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
58. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

59. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

ANSWERING THE SECOND CAUSE OF ACTION

NYLL Overtime Wage Violations—DENIED

60. The foregoing paragraphs are incorporated herein by reference as though fully set forth at length herein.
61. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
62. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
63. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

64. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
65. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

ANSWERING THE THIRD CAUSE OF ACTION

NYLL Failure to Notify—DENIED

66. The foregoing paragraphs are incorporated herein by reference as though fully set forth at length herein.
67. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
68. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
69. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

70. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

ANSWERING THE FOURTH CAUSE OF ACTION

NYLL Failure to Keep Records—DENIED

71. The foregoing paragraphs are incorporated herein by reference as though fully set forth at length herein.
72. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
73. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
74. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

75. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
76. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

ANSWERING THE FIFTH CAUSE OF ACTION

NYLL Failure to Provide Spread of Hours Compensation--DENIED

77. The foregoing paragraphs are incorporated herein by reference as though fully set forth at length herein.
78. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
79. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
80. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

ANSWERING THE SIXTH CAUSE OF ACTION

FLSA Retaliation--DENIED

81. The foregoing paragraphs are incorporated herein by reference as though fully set forth at length herein.
82. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
83. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
84. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
85. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

86. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
87. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
88. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
89. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
90. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

ANSWERING THE SEVENTH CAUSE OF ACTION

NYLL Retaliation—DENIED

91. The foregoing paragraphs are incorporated herein by reference as though fully set forth at length herein.
92. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
93. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
94. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
95. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.
96. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

97. Denied. The allegations in this paragraph of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that any aspects of this paragraph of Plaintiff's Complaint are deemed factual, they are denied.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint, with prejudice, together with an award of costs of suit and attorneys' fees.

FIRST, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations and/or repose.

SECOND, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

THIRD, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Defendants are not liable for punitive damages because it is unconstitutional to apply them to Defendants under the facts alleged as Defendants did not commit any act with malice or reckless indifference to Plaintiff's protected rights, or approved, authorized or ratified, or had actual knowledge of any such acts.

FOURTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of laches.

FIFTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver and/or estoppel.

SIXTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, upon information and belief, because of Plaintiff's failure to mitigate his alleged damages.

SEVENTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff has not suffered any damages attributable to the actions of Defendants.

EIGHTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Doctrine of Unclean Hands.

NINTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff resigned from his position and therefore has no claim for damages based on discharge.

TENTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Defendant is not an enterprise as set forth by the definition contained in the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 203(r) and § 203(s).

ELEVENTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

The Defendants acted in good faith at all times.

TWELFTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Defendants reserve the right to amend this Answer and to assert additional defenses and/or supplement, alter, and change this Answer upon revelation of more definitive facts by the Plaintiff upon completion of discovery and further investigation.

THIRTEENTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

There is no basis for individual liability in this matter.

FOURTEENTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Defendants invoke all defenses, protections, and limitations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq., and any and all parallel state laws.

FIFTEENTH SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff and those individuals Plaintiff purports to represent may not recover liquidated damages because Defendants did not commit any willful violation of the overtime provisions of the FLSA or NYLL.

SIXTEENTH SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff has failed to set forth facts sufficient to establish a prima facie case for violations of the FLSA.

SEVENTEENTH SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff was paid all monies owed to him by Defendants while employed by Defendants.

**EIGHTEENTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE
DEFENSE**

Plaintiff was a professional employee who was exempt from New York state and federal overtime.

**NINETEENTH, SEPARATE, DISTINCT, AND COMPLETE AFFIRMATIVE
DEFENSE**

Plaintiff was a supervisor who was exempt from New York state and federal law.

DEMAND FOR TRIAL BY JURY

Please take notice that Defendants hereby demand a trial by jury of all issues so triable in the within action.

WHEREFORE, Defendants respectfully demand dismissal of Plaintiff's Complaint with prejudice, together with attorney's fees, cost of suit, and such other reliefs as the Court deems just and equitable.

Respectfully Submitted,

Date: April 14, 2022

By: /s/ David E. Cassidy, Esq.
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